STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 122566-00-SF**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 6th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 27, 2011, XXXXX (Petitioner) filed a request with the Commissioner of Financial and Insurance Regulation for an external review under Public Act No. 495 of 2006, MCL 550.1951 *et seq*. The Commissioner reviewed the request and accepted it on August 3, 2011.

The Petitioner is enrolled for prescription drug coverage through the City of XXXXX

, a local unit of government self-funded plan under Act 495. Blue Cross Blue Shield of Michigan (BCBSM) administers the plan. Section 2(2) of Act 495, MCL 550.1952(2), authorizes the Commissioner to conduct this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*.

The Commissioner immediately notified BCBSM of the external review and requested the information used in making its final determination. The Commissioner received BCBSM's response on August 10, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is Blue Cross Blue Shield of Michigan's *Preferred Rx Program Certificate* (the certificate). *Rider PD-CR $5.00 Prescription Drug Copayment Requirement* and *Rider PD-BC $10 Prescription Drug Brand-Name Copayment Requirement $10* amend the certificate. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not

require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

On January 18, 2011, the Petitioner received the compounded prescription drug Papaverine HCL from XXXXX. Because XXXXX is a nonpanel pharmacy, the Petitioner paid the pharmacy the $95.00 charge and then requested reimbursement from BCBSM. After applying coinsurance and copayments, BCBSM reimbursed the Petitioner $7.13.

The Petitioner appealed BCBSM's reimbursement amount through its internal grievance process. BCBSM held a managerial-level conference and issued a final adverse determination dated May 25, 2011, upholding its payment determination.

III. ISSUE

Did BCBSM correctly reimburse the Petitioner for the Papaverine HCL prescription?

IV. ANALYSIS

Petitioner's Argument

The Petitioner, recovering from prostate cancer, asked his physician if he could try Papaverine HCL injections as part of his therapy. His physician prescribed the requested medication and referred him to XXXXX as the only pharmacy that could fill the prescription locally.

The Petitioner paid $95.00 to fill the prescription and believes that BCBSM should reimburse him considerably more than $7.13.

BCBSM's Argument

The certificate (p. 2.2) explains how prescriptions from nonpanel pharmacies[1] are covered:

> When a nonpanel pharmacy fills a prescription for a covered drug, you must pay the pharmacist the full cost of the drug and submit to us a claim form and proof of payment including the National Drug Code of the drug dispensed. . . .
>
> For covered drugs in the United States, we will reimburse you 75 percent (100 percent for emergency pharmacy services) of the BCBSM approved amount for the drug minus your copayment. [underlining added]

1 The certificate (p. 5.5) states a nonpanel pharmacy is "a provider that has not been selected for participation and has not signed an agreement to provide covered drugs through our PPO program. Nonpanel pharmacies have not agreed to accept the approved amount as payment in full for covered drugs or services provided to members."

"Approved amount" is defined in the certificate (p. 5.1):

> The lower of the billed charge or the sum of the drug cost plus the dispensing fee (and incentive fee, if applicable) for a covered drug or service. The drug cost, dispensing fee and incentive fee are set according to our contracts with pharmacies. The approved amount is not reduced by rebates or other credits received directly or indirectly from the drug manufacturer. Copayments that may be required of you are subtracted from the approved amount before we make our payment.

BCBSM's approved amount for the Petitioner's Papaverine HCL prescription is $29.51. BCBSM reimbursed the Petitioner for 75% of the approved after applying the $5.00 prescription drug copayment required under Rider PD-CR and the $10.00 brand name copayment under Rider PD-BC ($29.51 x 75% = $22.13 - $15.00 = $7.13).

BCBSM believes that it has paid the amount required by the certificate and riders and is not required to pay any additional amount.

Commissioner's Review

There is no dispute that the Petitioner's prescription came from a nonpanel pharmacist. Therefore, the certificate states that BCBSM reimburse the Petitioner 75% of its approved amount (minus any copayments) for the prescription. The approved amount is set according to BCBSM's contract with its panel pharmacists. Furthermore, the certificate does not require BCBSM to pay more even if Pharmalogics is the only pharmacy that can fill the prescription.

The Commissioner agrees with BCBSM's processing of the Petitioner's claim -- except for the application of the $10.00 brand name copayment. There is nothing in the record from which the Commissioner could conclude that the Papaverine HCL was a brand name drug. No documentation was provided to show that anything other than generic Papaverine HCL was prescribed or dispensed.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of May 25, 2011, is reversed in part. BCBSM shall, within 60 days of the date of this Order, reimburse the Petitioner an additional $10.00 for the brand name copayment that it applied to the Petitioner's claim for reimbursement. Within seven (7) days after providing the reimbursement, BCBSM shall furnish the Commissioner proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding its implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free 877-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner